
Livestock Nutrient Management Program

Report of Program Activities



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Executive Summary

In 2003, legislation was enacted that transferred the powers, duties and functions associated with the Dairy Nutrient Management Act from the Department of Ecology to the Department of Agriculture (WSDA). WSDA established the Livestock Nutrient Management Program (LNMP) to carry out the act and to provide regulatory oversight and guidance to livestock producers with animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs) regarding their water pollution prevention responsibilities under state and federal law.

This report summarizes the inspection and enforcement activities of the program since it was established at WSDA in July 2003. It also summarizes the significant activities and issues the program was involved with in 2005 and provides updates on efforts to make the state's program consistent with the revised federal requirements and to gain authority for WSDA to administer the federal CAFO permit.

By October 31, 2005, all but 29 of the current 556 dairies had been inspected by WSDA. Funding for a fourth inspector was provided in budgets passed by the 2005 Legislature. Addition of this position allowed WSDA to complete routine inspections of 107 dairies in the first quarter of FY 2006 and make a major stride in reaching the mandate to inspect each dairy at least once every two years.

Most dairies WSDA has inspected are doing a good job of managing their facility and managing manure, leachate from feed stockpiles, and other nutrient sources on site. Where producers do have problems, they tend to fall into the following categories: testing and record keeping; nutrient management plan (NMP) not matching the facility size; inappropriate field applications; improper lagoon management; and lack of management of other site infrastructure.

In addition to inspecting dairies, WSDA also coordinates with Ecology on inspections of non-dairy facilities that have CAFO permits. WSDA has made routine inspections of two feedlots in the last two years and will be inspecting the other permitted facilities in the next year.

WSDA inspectors have responded to 131 livestock-related water quality complaints since July 2003. WSDA coordinated with other agencies as needed on the complaints. Where discharges were documented, enforcement actions were taken.

WSDA has four primary enforcement tools provided under state law. Since July 2003 WSDA has issued 72 warning letters, which inform a facility that it poses a risk to water quality. WSDA has also issued 36 Notices of Violation. These require an operator to respond with information on how a problem occurred and what will be done to avoid it in the future. A total of 8 Administrative Orders have been issued which direct an operator to carry out specific actions in a certain time frame to address a problem. One civil penalty of \$12,000 was levied in FY 2004; four civil penalties ranging from \$1,500 to \$9,000 were levied in the first quarter of FY 2006.

Civil penalty moneys are deposited in an account used to provide grants for research or education activities that assist livestock operations to achieve compliance with state and federal water quality laws. One research grant of \$5,965 was awarded in the spring of 2005 for a monitoring and evaluation project in the Nooksack and Drayton Harbor watersheds.

Until WSDA receives delegated authority from federal Environmental Protection Agency (EPA) for the CAFO permit program, the Department of Ecology remains the agency responsible for administering the permit. WSDA and Ecology continue to cooperate closely on the CAFO permit program, operating under a memorandum of understanding (MOU). The MOU, first developed in 2003, was updated in 2005. The revisions primarily reflected changes that will increase administrative efficiencies for both agencies.

The WSDA Livestock Nutrient Management program has a 2005-07 biennial budget of \$1,184,000 from two primary funding sources: the Water Quality Account and the Water Quality Permit Account. The funding shortfall in the 2003-05 biennial budget was addressed by the 2005 Legislature with an additional \$240,000 provided to WSDA from the Water Quality Account.

WSDA put forward agency-request legislation in 2005 to provide the authority and tools needed to apply to EPA for delegation of the CAFO permit program. However, midway through the legislative session, the U.S 2nd Circuit Court of Appeals issued a decision that affected elements of the federal CAFO rule. This raised uncertainties and affected the progress of the bill. In the end, legislation was passed directing WSDA and Ecology to develop a joint legislative proposal to complete movement of the CAFO program to WSDA. With continued disagreement and uncertainty on some issues, the agencies decided to not pursue legislation for the 2006 session.

2005 legislation also addressed dead animal disposal and public disclosure of information in nutrient management plans and reports. This prompted additional activity by the program during the year.

The program's Development and Oversight Committee (DOC) was expanded from 16 members to 21 members in the summer of 2005 with the addition of four legislators and an additional representative of the cattle industry. The committee continued to be a forum for discussion and exchange of information regarding livestock and water quality issues, with a major focus on legislative issues.

WSDA continued to work with Ecology to implement the state's CAFO program consistent with the federal CAFO rule. Ecology revised the draft CAFO General Permit and made it available for public review in October 2005. The final permit is expected to be issued in late winter 2006.

WSDA continued to work towards gaining delegation of the CAFO permit program. One requirement is to demonstrate ability to carry out the program. EPA is closely following WSDA's implementation of the state dairy nutrient management program as an indicator of future performance.

Livestock Nutrient Management Program Update

In 2003, legislation was enacted that transferred the powers, duties and functions associated with RCW 90.64, the Dairy Nutrient Management Act, from the Department of Ecology (Ecology) to the Department of Agriculture (WSDA). The legislation also directed that necessary legislation be developed to allow WSDA to fully administer the expanded livestock nutrient management program resulting from recently revised federal rules for Concentrated Animal Feeding Operations (CAFOs).

WSDA established the Livestock Nutrient Management Program (LNMP) to carry out the Dairy Nutrient Management Act and to provide regulatory oversight and guidance to livestock producers with animal feeding operations (AFOs) and CAFOs regarding their water pollution control prevention responsibilities under state and federal law.

Dairy Nutrient Management

The Dairy Nutrient Management Act was enacted in 1998. It requires all licensed dairy farms to develop and implement nutrient management plans that prevent the discharge of livestock nutrients to surface and ground water. WSDA is to inspect each of these dairies at least once every two years. Inspectors evaluate the facilities and nutrient management practices for any risk from livestock nutrients (manure and associated wastes) to impact water quality.

A dairy farm may be required to obtain a permit from the Department of Ecology if it is a Large CAFO that has a discharge or if it is a smaller AFO that has a discharge that is determined to be a significant contributor of pollution to surface or ground water. For those dairies that are required to have a CAFO permit, WSDA inspectors evaluate compliance with permit conditions and coordinate with Ecology on permit administration.

When WSDA took over the program in 2003, there were 580 dairies and 246,297 milking and dry cows. As of October 31, 2005, there were 556 dairies listed with the LNMP program with roughly 240,000 milking and dry cows. In the last year, 39 dairies have gone out of business and 23 new dairies have started up. Some dairies that have gone out of business have done so as part of the industry-funded buy-out program.

As of January 1, 2005, 110 dairies held CAFO permits issued by the Department of Ecology.

Dairy Inspections

By October 31, 2005, all but 29 of the current 556 dairies had been inspected by WSDA. The department did not inspect all dairies within the first two years of administering the program due to a delay in filling inspector positions and a shortfall in program funding. Permanent staffing of all three of the original inspector positions was not achieved until September of 2004. Funding for a fourth inspector was provided in budgets passed by the 2005 Legislature. The position was filled in August 2005.

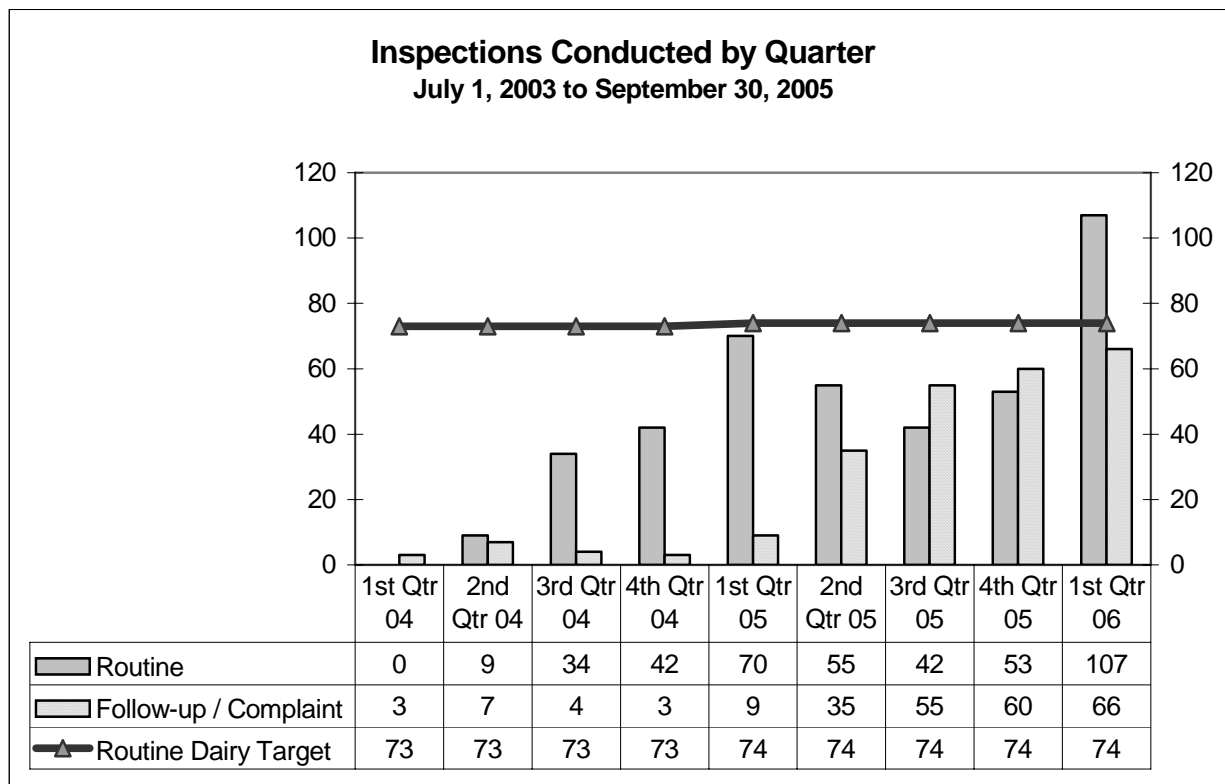
The program placed a heavy emphasis on late summer inspections to ensure proper conditions going into winter. The addition of the fourth inspector allowed WSDA to complete 107 routine inspections in the first quarter of FY 06.

Inspectors receive training from Ecology and EPA staff as well as attend the required state investigators training. Inspectors periodically team up to inspect a number of facilities in one area. Because dairies are not uniformly distributed across the state, this helps even out the workload for inspectors, increases visibility of the inspection program, and provides opportunities for the inspectors to discuss common issues and ensure consistency in the inspection program.

Where discharges or conditions that pose a high potential to pollute are documented, appropriate enforcement actions are taken. In addition, inspectors generally refer the operator to the local Conservation District for technical assistance. To ensure follow through, inspectors require reporting from the facility or make follow-up inspections.

WSDA inspectors work with Ecology, local governments and local watershed and shellfish district committees to help target inspections in critical water quality areas.

Evaluating implementation of a dairy's nutrient management plan is an important part of every inspection. By keeping the plan current with their facility size and operations and by properly following the practices, operations should not pose a risk to water quality.



Inspection Findings

Most dairies WSDA has inspected are doing a good job of managing their facility and managing manure, leachate from feed stockpiles, and other nutrient sources on site. Prior to its transfer to WSDA, the program focused on getting the needed facilities and infrastructure developed for each dairy as well as site management. While site conditions continue to be an important part of WSDA inspections, more focus is now given to site management issues and appropriately carrying out the nutrient management plan (NMP) and practice standards.

Most Common Problems

The following items are the areas of facility and nutrient management that inspectors have spent the most time addressing with those producers that have had problems. The items are listed in descending order of frequency.

- NMPs require soil and manure testing and record keeping for proper field applications.
 - * Regular testing and record keeping is not always done.
 - * Information is not always used properly to adjust field applications to reduce nitrogen levels in the soil when needed.
- NMPs are to be current with the number of animals and acreage available for applications or amount of manure exported.
 - * Some facilities have changed over time and plans are too far out of balance. There are more nutrients than acres to apply to and arrangements to export nutrients off site may be inadequate or uncertain.
- Field applications need to be made at agronomic rates (the rate at which nutrients will not leach below the root zone of the crop and will be fully taken up by the plants) and also need to follow any applicable restrictions on timing or buffer requirements for each field.
 - * Applications have been made at the wrong time or on inappropriate fields and buffers have been reduced or ignored.
- Proper lagoon management requires maintaining the integrity of the lagoon dike and retaining full lagoon capacity. Capacity is maintained through proper solids management and emptying the lagoon during the application season.
 - * A variety of lagoon management issues are evident.
 - * Over-full lagoons are of particular concern due to the risk of discharge. Although a small number of operators have this problem, it requires concerted efforts by the inspector and Conservation District or applicable consultant to determine the cause and avoid discharges in inclement weather.
- Facility infrastructure, such as gutters and curbs, pumps and pipes, need to be managed and regularly maintained to protect water quality.
 - * Some operators have created, or increased, the risk of having a discharge through management decisions or lack of proper maintenance.

Improvements

Producers are making improvements in their use of data from required soil and manure samples for more effective field applications. Review of record keeping and use of test data is an area that is regularly emphasized by inspectors while on site. It is also the subject of ongoing technical discussions with staff from Conservation Districts, WSU Extension and the Natural Resources Conservation Service in order to provide consistent assistance back to producers.

Required Implementation of Dairy Nutrient Management Plans

The Dairy Nutrient Management Act requires that all dairies develop and implement a nutrient management plan (NMP) within a specified time period. Local Conservation Districts must approve each plan as meeting plan requirements. The District and the producer must both certify that the plan is fully implemented.

Dairies in existence in 1998 had until December 31, 2003 to develop and implement plans. New dairies have six months to develop and another 18 months to implement their NMP. On December 31, 2003, 80% of the licensed dairies had certified plans. By December 31, 2004, 89% had plans that were certified.

As of October 31, 2005, 90% of the licensed dairies had certified plans. There are 23 newer dairies (4% of licensed dairies) that are in the process of developing and implementing plans. The remaining 33 facilities (6% of licensed dairies) are mostly a combination of small dairies still waiting for funding to complete certain structural improvements, or with unique circumstances that were or may be addressed with revisions to certain NRCS standards and guidelines. A handful are small facilities with operators that choose not to have approved and certified plans based on principle or because they are nearing retirement.

Uncertified facilities are inspected more frequently, particularly where their management may pose a risk to water quality. Penalties of \$100 per month continue to be levied on a quarterly basis against those out of compliance.

Non-Dairy CAFO Nutrient Management

In addition to the dairies with permits, there are 13 feedlots and one racetrack that hold CAFO NPDES permits issued by the Department of Ecology. These facilities each have an individual CAFO permit, with permit conditions specific to the facility. WSDA coordinates with Ecology on inspections of these facilities and has made routine inspections of two operations in the last two years and will be inspecting the rest of the feedlots in the next year. There were no follow up issues present at either of the two facilities inspected. One of the facilities did report a potential discharge last spring, as required by their permit. Staff inspected the situation and determined no discharge from the facility had occurred.

Complaint Response and Investigation

WSDA inspectors respond to livestock-related water quality complaints that appear to involve AFOs. Where discharges are documented, appropriate enforcement actions are taken. Where appropriate, and following the federal criteria, WSDA will recommend to Ecology that a facility be designated as a CAFO. No recommendations have been made to Ecology at this time.

Some complaints come from local health department staff or other local agencies and others are from the general public. They are received directly by WSDA staff or are referred to WSDA by Ecology through their complaint response system. Inspectors coordinate with the local health department or other local agencies as appropriate. In some cases there is no water quality problem identified.

Some complaints are investigated by contacting the local Conservation District or other local agency staff. In some cases, the complaint is referred directly to the local staff for follow up. Generally, the inspectors will make an onsite inspection. Where problems are documented and follow up is needed, the inspectors require reporting by the facility or make follow-up inspections. The operator is also referred to the local Conservation District for needed technical assistance, or contact may be made with a facility's consultant if appropriate.

If the complaint investigation finds that the problem is from a non-point source, such as pastured animals or manure applications by parties other than the facility where the manure came from, WSDA refers the complaint to Ecology. Complaints that relate to air quality or odor are referred to the local air authority or health department as well as the local Conservation District.

WSDA has responded to 131 complaints since July 2003. The most common documented complaints relate to poor manure applications to fields or inappropriate storage of manure. However, there have been serious discharges identified through complaints. While most complaints relate to dairy or beef operations, there are a number that relate to goat operations or horses.

Compliance Activity

WSDA enforces the Dairy Nutrient Management Act and violations of Chapter 90.48 RCW. There are four primary enforcement tools provided under these statutes.

Here is a brief description of these enforcement tools and how the LNMP program uses them.

- **Warning Letter**
A warning letter is a letter issued by an inspector to inform a facility that it poses a risk to water quality. Problems may include: needing an updated plan to better address current activities or not following certain elements of the Nutrient Management Plan, such as not soil testing, not keeping proper records, or ignoring required buffers.
- **Notice of Violation (NOV)**
A Notice of Violation is issued:
 - * When a discharge occurs;

- * When permit conditions are violated; or
- * When circumstances pose a serious potential to discharge to waters of the state.

At a minimum, the NOV requests information from the producer on how the violation occurred, what was done to fix it, and how it will be prevented in the future. The agency uses the information as part of its decision on whether to take additional action or not.

- **Administrative Order**

An Administrative Order requires specific actions in specified timelines by the producer to stop a discharge and prevent future discharges. A variety of requirements, depending on circumstances, may be included. These actions can be appealed to the Pollution Control Hearings Board.

- **Civil Penalties**

Civil penalties are issued as a result of violating the prohibition in RCW 90.48.080 to discharge pollutants to waters of the state. The amount is based on the severity of impacts, cause, action taken by operator and history of facility. The statute allows for a penalty of up to \$10,000 a day. These penalties can be appealed to the Pollution Control Hearings Board (PCHB). The producer may also request relief of the penalty amount from the department prior to appealing to the PCHB. Under the Dairy Nutrient Management Act, the penalty may be waived for first-time violators.

There have been several spills in the last year, on both the east and west sides of the state. Causes included broken equipment, lagoon overflows or misapplication to fields. WSDA inspectors responded to each incident and worked with the operators to stop the discharge and to carry out needed work to clean up and prevent the problem in the future. The inspectors make a recommendation for enforcement when violations occur and send them to the Olympia office for a decision and subsequent administrative actions to carry out the necessary enforcement steps.

Here is a summary of the enforcement actions taken since July 2003 by WSDA.

Enforcement Actions	FY 04	FY05	FY 06 as of 10/31/05	Total
Warning Letter	14	51	7	72
Notice of Violation	1	31	4	36
Administrative Order	1	6	1	8
Civil Penalties				
Number	1		4**	5
Amount	\$12,000		\$1,500-\$9,000	

Notes: ** Two requests for relief have been made to the department.

Other Activities

Technical Assistance and Education

In addition to this regulatory work, WSDA coordinates with other state and federal agencies, such as the Natural Resources Conservation Service (NRCS), the Conservation Commission,

Conservation Districts and Washington State University, on technical assistance and education for producers.

Technical issues addressed and assistance provided in 2005 included:

- Participation in revision to NRCS guidance to allow winter applications for certain low intensity facilities and conditions. This has allowed several facilities to get certified.
- Work to develop guidance for producers to address recognized problems in testing and record keeping.
- Discussions with producers, Districts and NRCS on ideas for making nutrient management plans more user-friendly and accessible as a regular management tool.
- Developing guidance for controlling and managing runoff from permanent and temporary stockpiles of feed, such as food processing waste or silage.
- Helping to develop and present information on AFO/CAFOs for training conducted by WSU and conservation districts.

Grant Program

The legislation transferring the program to WSDA also directed that civil penalties from violations of the Dairy Nutrient Management Act be used to provide grants for research or education activities that assist livestock operations to achieve compliance with state and federal water quality laws. Previously these penalty monies were granted to local conservation districts to assist producers in developing NMPs. Grant proposals are reviewed by the Development and Oversight Committee prior to being awarded by WSDA.

One research grant of \$5,965 was awarded in the spring of 2005 for a project in the Nooksack and Drayton Harbor watersheds. The grant covered additional monitoring of certain sites in the watersheds and evaluation of the available data to see if there might be impacts to water quality from the early spring manure applications. (None were noted.)

The balance in the grant program's account as of November 30, 2005 is \$58,937. WSDA expects to more fully develop the grant program in 2006 to establish priorities, set a time for applications to be made and award available funding.

Ecology Program and Permit Administration Activities

Until WSDA receives delegated authority from EPA for the CAFO program, Ecology remains the agency responsible for administering the CAFO permit program. This includes developing and issuing permits, retaining original files for permitted facilities and setting and collecting permit fees.

In 2004 and 2005, no new permits were issued by Ecology because of CAFO rule changes at the federal level. Permitted dairies have been covered under a Dairy General Permit that was adopted in 2000. Non-dairy CAFOs are covered by individual permits. To comply with changes in the federal CAFO rule, Ecology proposed a general permit for CAFOs to replace the dairy general permit and at least some of the individual permits for non-dairy CAFOs.

Ecology proposed a first draft of the new general permit in December 2004. In February 2005, a court decision affected elements of the federal CAFO rule and Ecology put its permit process on hold. (See section on “Compliance with the Federal CAFO Rule” for more information.) Ecology revised and reissued the draft permit in October 2005 to reflect changes from the court decision and the comments received on the first draft. The comment period on the new draft permit ran until December 5, 2005. Ecology’s published timetable states that it expects to issue the final general permit sometime in late winter 2006 and then request applications from new and existing permittees. The permit is to take effect 30 days after it is issued. Facilities may be issued coverage under the permit after the application and review process have been completed.

WSDA and Ecology continue to cooperate closely on the CAFO permit and program, operating under a memorandum of understanding (MOU). The MOU, first developed in 2003, was updated in 2005. The revisions primarily reflected changes that will increase administrative efficiencies for both agencies.

Program Funding

The WSDA Livestock Nutrient Management program has a 2005-07 biennial budget of \$1,184,000. The program has two primary funding sources:

1. \$901,000 from the Water Quality Account for the primary inspection program; and
2. \$224,000 from the Water Quality Permit Account for costs related to NPDES permitting.

The program also has expenditure authority of \$59,000 from the Livestock Nutrient Management Account to provide grants for research or education activities that assist livestock operations to achieve compliance with state and federal water quality laws. Moneys in the account are from penalties levied under the Dairy Nutrient Management Act.

The program has six staff: a program manager, a support staff and four field inspectors.

The funding shortfall in the 2003-05 biennial budget was addressed by the 2005 Legislature with \$240,000 in additional funding provided to WSDA from the Water Quality Account.

A portion of the agency's appropriation from the Water Quality Permit Account is made available to the Department of Ecology to cover some of its costs associated with continued administration of the combined CAFO and state waste discharge permit. This is addressed in the agencies' memorandum of understanding (MOU).

Significant Activities and Issues in 2005

Legislation

An immense amount of time and energy was consumed by legislative activities in 2005.

2005 Session Activities

WSDA worked with its Development and Oversight Committee (DOC) and other stakeholders in 2004 to develop a legislative proposal as directed by the 2003 Legislature. The resulting draft was approved by the Governor and put forward by WSDA as agency-request legislation for the 2005 legislative session. The bill proposed to replace the Dairy Nutrient Management Act with a new statute that established a comprehensive livestock nutrient management program administered by WSDA. It included the authority and tools needed by WSDA to apply to EPA for delegation of the CAFO NPDES program, which are the same authority and tools Ecology currently has in administering the CAFO and state waste discharge program. The bill established the definitions and elements of the federal CAFO rule as the basis of the state program. The bill also included some updates and revisions to the Dairy Nutrient Management program.

The proposal was introduced in both the House of Representatives and the Senate. Both bills were the subject of work sessions and public hearings. In initial hearings, the livestock industry raised concerns about public disclosure of nutrient management plans while the environmental community expressed general concerns about whether the program will be sufficiently rigorous to assure protection of water quality.

Midway through the session, on February 28, the U.S 2nd Circuit Court of Appeals issued its decision that affected three major elements of the federal CAFO rule, including who must apply for a permit, the need for technical review of nutrient management plans, and availability of plans to the public. This decision prompted a whole new level of questions and uncertainties. There was considerable effort by parties on all sides, up until the final days of session, to pass a bill addressing the intent of the original bill.

In the end, a final short bill, containing none of the provisions of the original agency-request bill, was put together on the second to last day of session and passed by the House and Senate (ESSB 5602). The “striking amendment” included provisions on composting dead horses and cattle, water quality monitoring protocols, exempting certain specific information in livestock nutrient management plans and reports from public disclosure, and adding six members and two tasks to the program’s Development and Oversight Committee. The bill also directed WSDA and Ecology to come back to the legislature with joint recommendations on statutory changes to fully implement the current program.

Governor Gregoire vetoed Section 2 of the bill that added tasks to the DOC but directed that some of its provisions be carried out. These included: adding legislators to the Development and Oversight Committee and directing WSDA, Ecology, and the Department of Health, working

with the State Board of Health, to report on their programs related to disposal of animal carcasses to the Legislature during its legislative assembly in September 2005.

Development of Legislation for 2006 Session

In early summer, WSDA and Ecology agreed to work to develop new draft legislation for the 2006 legislative session. The agencies discussed the direction of this legislation with the DOC at its July meeting and asked for specific input by early August. Director Loveland and Director Manning met in September to discuss the key issues related to development of the joint-agency request legislation. The most important goal for this session was to establish statutory authority needed by WSDA to obtain federal delegation for CAFO program.

As a result of that meeting, subsequent conversations with stakeholders, and feedback from the September meeting of the DOC, the agencies prepared proposed legislation that would only establish statutory authority needed by WSDA to obtain federal delegation for CAFO program. There would be no revisions to the Dairy Nutrient Management Act or to the state's water quality law.

The proposed legislation was provided to the DOC in mid-October for review and comment. Feedback received showed there was disagreement and uncertainty on some issues. During a conference call on October 28, Director Loveland informed the DOC that she and Director Manning had decided that the agencies would not move forward with legislation for the 2006 session.

WSDA and Ecology will continue discussions with the DOC and other stakeholders with the goal of developing joint agency legislation for the 2007 legislative session.

Dead Animal Disposal

Under the revised federal CAFO rule, producers must include a plan for proper disposal of dead animals in their nutrient management plan. The dead animal disposal plan must be consistent with state law. Unfortunately, Washington state laws and rules on animal disposal are outdated, contradictory or confusing.

This situation was brought up by the livestock industry during the 2005 legislative session and prompted meetings and legislation intended to address the problem. Industry pushed for the ability to compost dead cattle, which resulted in an amendment to the state's solid waste law addressed composting of dead cattle and horses under specific conditions. The legislation required Ecology and WSDA, in consultation with the Department of Health, to produce clearly written guidelines on composting bovine and equine carcasses for routine animal disposal. The guidelines, "On-Farm Composting of Livestock Mortalities," were completed in August and are available on Ecology's Web site.

Because of the new requirement for nutrient management plans and other dead animal disposal issues, particularly those related to emergency response, WSDA convened an interagency work group in spring 2005. Staff from the State Board of Health, Department of Health, Department of Ecology and WSDA's Animal Health and Homeland Security programs worked to develop an

integrated approach that addressed the needs and concerns of the individual agencies and livestock industry.

In May, the State Board of Health (SBOH) initiated the process to update its rule that includes dead animal disposal. The rule (WAC 246-203-120) was adopted in 1960, and has been unchanged since 1965. Draft revised rules have been developed with input from the agencies, the livestock industry, and local directors of environmental health. The purpose of the revised rule is to require proper disposal of carcasses that are nuisances or pose a threat to public health.

The SBOH has delayed its rulemaking process to allow the Legislature to consider legislation developed by WSDA in the 2006 session to amend statutory language enacted in 1949 that limits disposal options to immediate burial or rendering. WSDA has received approval to pursue agency-request legislation to allow additional appropriate options for dead animal disposal.

WSDA has developed a partial draft of 'clear guidance' on routine livestock carcass disposal and plans to complete the guidance based on the outcome of the legislative proposal and rulemaking process.

Public Disclosure

Producers have been concerned about the public disclosure of information from their nutrient management plans for some time. This concern was raised by the livestock industry in testimony on the WSDA-request legislative proposal during the 2005 session. The issue became a moot point for permitted livestock facilities after the 2nd Circuit Court of Appeals decision on the CAFO rule. One of the court findings, announced during the middle of the legislative session, was that the NMP had to be submitted with the CAFO permit application and made available for public review and comment as part of the permit process. However, the industry remained interested in gaining some protection for livestock facilities required to have a plan but not required to apply for a permit. This includes at least 400 of the state's dairies.

In the legislation passed in 2005, the Dairy Nutrient Management Act and the State Public Disclosure law were amended to allow certain information in plans, records, and reports obtained from dairies and other animal feeding operations that are not required to apply for a permit to be disclosable only in ranges. WSDA is to adopt rules to implement this. The disclosure in ranges is intended to provide meaningful information to the public while ensuring confidentiality of business information regarding: (1) number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields. Rulemaking is expected to get underway in 2006.

Development and Oversight Committee (DOC)

The program's Development and Oversight Committee (DOC) was expanded from 16 members to 21 members in summer 2005 with the addition of four legislators and an additional representative of the cattle industry. During the year, three members left the committee and were replaced by others.

The committee continued to be a forum for discussion and exchange of information among stakeholders regarding livestock and water quality issues. The committee provided useful advice and feedback to the agency as it dealt with uncertainties during the 2005 legislative session and the changing federal rule under the 2nd Circuit Court decision. Feedback from the DOC was a decisive element in WSDA and Ecology's decision not to pursue legislation in the 2006 session.

Committee discussions have also helped guide implementation of the dairy program and efforts by the Conservation Commission and WSU on education and outreach activities by their organizations to AFOs and potential CAFOs.

Meetings and Main Discussion Topics, 2005

February - Hyak

- Current legislation and legislative issues
- Update on draft CAFO permit
- LNMP/Dairy program implementation and areas of need for technical assistance and education

March - Olympia

- Current legislation and legislative issues
- Draft CAFO permit and issues related to jurisdiction, state and federal program

May - Ellensburg

- Results of legislative session
- CAFO permit and rule changes due to 2nd Circuit Court decision

July - Olympia (First meeting with new committee members)

- Extended discussion on legislative and program issues
- Status of draft CAFO general permit
- Update on animal disposal and livestock composting guide

September - Hyak

- Direction on joint-agency legislation
- Status of permit and 2nd Circuit Court issues
- Board of Health draft rule change and WSDA legislative proposal on dead animal disposal
- NRCS technical standards and guidance and coordination between NRCS and State

- Bio-energy connections

December - Olympia

- Issues related to potential legislation for 2007 session
- Updates on CAFO general permit, WSDA's legislative proposal on dead animal disposal and the Conservation Commission's 2005-07 Livestock Grant Program

Development and Oversight Committee Members, 2005

Present (Past)

<i>Dairy Producers (3):</i>	Chuck Hayes Dan DeGroot Dick Bengen
<i>Beef Producers (3):</i>	Karl Amidon Ed Knutzen Chad Henneman
<i>Commercial Feedlots:</i>	David Secrist, Agri Beef
<i>Poultry Industry:</i>	Chris Cheney, WA Fryer Commission (Jon Moose)
<i>Food Industry:</i>	Dr. Duane Olsen, DVM, Briarwood Farms
<i>Shellfish Industry:</i>	Steve Bloomfield, South Sound Aquaculture
<i>Environmental Interests:</i>	Lynn Bahrych, Washington Environmental Council (Monty Mahan)
<i>WA Assn of Conservation Districts:</i>	Lynn Brown (Fred Colvin)
<i>Department of Ecology</i>	Melodie Selby (Melissa Gildersleeve)
<i>Washington State University</i>	Dr. Joseph H. Harrison
<i>Environmental Protection Agency</i>	Tom Eaton, Director of WA Operations (Annette Bryan)
<i>Tribal Governments:</i>	Jim Peters, Squaxin Tribe
<i>Legislators</i>	Senators Marilyn Rasmussen and Bob Morton Representatives Eric Pettigrew and Joel Kretz
<i>Department of Agriculture</i>	Vacant (Kathy Kravit-Smith)

AFO/CAFO Program Strategy

The mission of the WSDA Livestock Nutrient Management Program is to protect water quality from livestock nutrient discharges and to help maintain a healthy agricultural business climate. This can be achieved through clear guidance, education, technical assistance, equitable enforcement of state and federal water quality laws and good communication with industry, related agencies and other stakeholders.

Strategic planning to carry out this mission has a number of elements.

- ◆ Focus on carrying out the existing regulatory and inspection program for dairies and permitted CAFOs.
 - Inspect every dairy at least every two years and inspect non-dairy CAFOs in coordination with Ecology.
 - Ensure that inspectors have adequate technical expertise.
 - Provide effective guidance to producers to achieve compliance.
 - Carry out needed enforcement actions effectively and in a timely manner.
- ◆ Coordinate with Ecology, other stakeholders and the facilities required to hold a CAFO permit on implementing the general permit and any individual permits.
 - Focus on existing permitted facilities; then on larger facilities that may be at risk.
 - Work with others to prevent AFOs from discharging and becoming permitted CAFOs.
 - Work closely with Ecology on administration and implementation of the permit.
- ◆ Continue work to obtain full authority for WSDA to administer the CAFO permit.
 - Coordinate with EPA, Ecology and stakeholders on needed legislation.
 - Coordinate with Ecology on a transition plan so that WSDA develops needed permit technical and administrative expertise.
 - Continue involvement with national CAFO roundtable group.
- ◆ Cooperate with technical and educational agencies to assist producers in better protecting the state's water quality.
 - Identify needs for technical assistance and coordinate on providing that assistance.
 - Identify and cooperate on technical issues that will benefit from new information, practices or improved guidance for more effective implementation.
 - Work with NRCS and other stakeholders on NRCS state practice standards that may be used by AFO/CAFO operations.
- ◆ Help maintain good communication and cooperation among producers, agencies and other stakeholders.
 - Identify and address issues that develop regarding program elements or implementation.
 - Support education, technical assistance, and cost-share opportunities for producers.
 - Work with dairy and non-dairy industry groups to identify and educate potential CAFO producers regarding their responsibilities.

Compliance with the Federal CAFO Rule

The revised CAFO rule issued by EPA in 2002 requires states to revise their programs to be consistent with the new federal rule requirements. The rule also requires producers with permits to apply for their new permit by April 2006 and have new or revised nutrient management plans fully implemented by December 31, 2006.

So that Washington's program is consistent with the revised federal rule, Ecology developed a new CAFO General Permit in 2004 to replace the Dairy General Permit and also be available for non-dairy operations. After public review, the permit was to be issued in the spring of 2005. However, a decision by the U.S. 2nd Circuit Court of Appeals on a set of challenges to the rule was announced on February 28, 2005. This decision affected several important areas of the permit and Ecology delayed issuance of the permit during the appeal period for the decision.

Based on the court decision and comments from the first public review, Ecology revised the draft CAFO General Permit and made it available for public review in October 2005. The comment period ended December 5. The final permit is expected to be issued in late winter 2006. Ecology will then notify currently permitted facilities and others that had submitted permit applications about the final permit requirements and request they submit new applications.

Because of the court ruling, EPA must change certain sections of the federal CAFO rule. Those changes are expected to be available for public review this spring and adopted at the end of 2006. Because of the changes, EPA has announced that it will delay the April 2006 permit application date and the December 31, 2006 plan implementation date to allow states and operators time to respond. New dates have not been announced yet.

Primary areas affected by the court ruling include:

- **Who must apply for a permit**
Prior to the decision, any facility that met the definition of a Large CAFO (with a specified number of animals) had to apply for a permit as well as smaller operations with a direct discharge. Now, only those facilities that actually discharge or propose to discharge must apply for a permit. This will result in fewer operations that need to apply.
- **Review of Nutrient Management Plans**
Before the decision, plans were kept by the producer on-site unless requested by an agency. Now, the nutrient management plan must be submitted as part of the permit application. The permitting agency can then review the plan for adequacy and the plan is available for public review.
- **The Agricultural Stormwater Exemption**
Prior to the decision, there were questions on whether discharges from application fields could be considered a point source discharge and how the exemption was to be applied. Now, such a discharge is clearly identified as a point source from a CAFO and, if not based on

agronomic rates, is a violation and triggers the requirement for a permit. Pending rule writing by EPA should clarify how the exemption is to be applied.

Here are other requirements of the 2002 federal rule changes that Washington's CAFO program is addressing:

Requirement	Washington response
1. Specify technical standards to be used.	NRCS standards have been identified.
2. Ensure there is a process or criteria to ensure the quality of nutrient management plans.	Plans must meet NRCS standards and will be reviewed through the public permit application review process. This will allow the public, stakeholder groups and other local and state government entities to review and comment on the adequacy of the plan. The permitting agency (Ecology for now) makes the final determination on the permit application.
3. Create a process to evaluate the use of alternative designs and practices.	WSDA intends to write rules to establish a technical panel composed of the appropriate experts for the alternate proposal. Experts would be drawn from Conservation Districts, NRCS, Ecology, WSU and WSDA staff.
4. Develop and issue general permits meeting the new federal requirements for livestock operations.	Ecology is in the process now. Permits are good for no longer than 5 years so the permit will need to be reviewed and revised as needed in 2010.
5. Address process for designating facilities as CAFOs to be brought under permit.	WSDA intends to write rules to establish details of this process. Federal criteria are already established in federal rule and state criteria cannot be less stringent.

Federal Delegation Update

WSDA, Ecology and EPA staff held their third annual meeting in September to discuss WSDA's implementation of the dairy nutrient management program and the process and issues related to WSDA gaining delegation of the CAFO program. To gain delegation, WSDA must have adequate legal authority, adequate resources and expertise, and demonstrated program performance.

EPA is closely following implementation by WSDA of the dairy nutrient management program as an indicator of program performance. This is particularly evident in the Nooksack River watershed where a water quality clean-up plan has been in effect for a number of years with great success. In the last three years there have been some increases in surface water pollutants, primarily bacteria. This raises concerns for effects to the downstream shellfish beds and highlights the need for identifying the factors causing the increase. While there are other agencies with water quality responsibilities, EPA is looking closely at how WSDA responds to the issues. The increase in dairy inspections in the area over the last year and increases from adding a fourth inspector are expected to result in improvements to these bacteria levels.

EPA's emphasis continues to be on WSDA having the statutory authority necessary to manage and enforce the NPDES permit program. EPA worked closely with WSDA in reviewing agency-request legislation and legislative proposals brought forward by others during the 2005 legislative session.

When the application for delegation is made, EPA will look closely at whether there are sufficient resources and expertise available to WSDA to carry out necessary administrative and compliance activities.

Ohio and Oregon are both in the process of moving their CAFO permit programs to their agriculture agencies. Both are close to completing the submittal package in order to apply for delegation. WSDA continues to stay in touch with both states on their progress.

WSDA gained additional resources and continued to gain expertise in 2005. These will play an important role in performance. WSDA was not able to gain the needed statutory authority for delegation in 2005. At this point, WSDA estimates it will be at least four years before it submits a final application for delegation. Here is an outline of the steps assuming that legislation is passed in the 2007 session.

1. Gain needed statutory authority

- December 2005 to September 2006 – WSDA and Ecology work with stakeholders on legislative issues and provide drafts for review.
- September 2006 – Joint WSDA/Ecology agency-request legislative proposal submitted to Governor's Office for review and approval.
- January-April 2007 – Seek passage of approved legislation.

2. Adopt needed rules to carry out legislation

- April 2007 – Based on enacted legislation, outline needed rules and the potential for emergency rules.
- June 2007 – Begin work with advisory committee on developing initial draft of rules and adopting emergency rules if needed.
- June 2008 – Final AFO/CAFO rules adopted.

3. Apply for EPA delegation

- October 2008 – After final AFO/CAFO state rules are adopted, submit draft application package to EPA for preliminary review.
- 2008-09 – Ongoing work by WSDA with Ecology to transfer NPDES permitting administration activity.
- October 2009 – Submit final application package to EPA requesting delegation of CAFO NPDES program.

AFO/CAFO Definitions

"Animal feeding operation" or "AFO" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(a) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

(b) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Designate as a CAFO" means the appropriate authority has determined that an AFO is a significant contributor of pollutants to waters of the state and issued a formal designation.

"Large concentrated animal feeding operation" or "large CAFO" means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

- (a) 700 mature dairy cows, whether milked or dry;
- (b) 1,000 veal calves;
- (c) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;
- (d) 2,500 swine each weighing 55 pounds or more;
- (e) 10,000 swine each weighing less than 55 pounds;
- (f) 500 horses;
- (g) 10,000 sheep or lambs;
- (h) 55,000 turkeys;
- (i) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (j) 125,000 chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;
- (k) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- (l) 30,000 ducks, if the AFO uses other than a liquid manure handling system; or
- (m) 5,000 ducks, if the AFO uses a liquid manure handling system.

"Livestock nutrient" means manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal or process wastewater, which means water directly or indirectly used in the operation of the AFO for any or all of the following: Spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

"Medium concentrated animal feeding operation" or "medium CAFO" means any AFO with the type and number of animals that fall within any of the ranges listed below and which has been defined or designated as a CAFO. An AFO is defined as a medium CAFO if:

(a) The type and number of animals that it stables or confines falls within any of the following ranges:

- (i) 200 to 699 mature dairy cows, whether milked or dry;
 - (ii) 300 to 999 veal calves;
 - (iii) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;
 - (iv) 750 to 2,499 swine each weighing 55 pounds or more;
 - (v) 3,000 to 9,999 swine each weighing less than 55 pounds;
 - (vi) 150 to 499 horses;
 - (vii) 3,000 to 9,999 sheep or lambs;
 - (viii) 16,500 to 54,999 turkeys;
 - (ix) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
 - (x) 37,500 to 124,999 chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;
 - (xi) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
 - (xii) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system; or
 - (xiii) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and
- (b) Either one of the following conditions are met:
- (i) Pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or
 - (ii) Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.